IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

Review Petition No.91 of 2019
against
S.A.Nos.933 of 2013

1. The District Collector,
   Ariyalur.

2. The Revenue Divisional Officer,
   Ariyalur.

3. The Tahsildar,
   Ariyalur ...Petitioners/Appellants

-Vs-

1. Durai Raj
2. Kalavathi
3. Kunjumani
4. Sulochana
5. Saraswathi ...Respondents/Respondent

Prayer : Review Petition has been filed under Order 47 Rule 1, r/w. 114 of C.P.C against the order dated 28.03.2016 passed by this Court in S.A.No.933 of 2013.

Prayer in SA No.933 of 2013: This Memorandum of Second Appeal is filed under section 100 of Civil Procedure code to set aside the Judgement and Decree dated 24/11/2012 made in AS No.18/2012 on the file of Sub Court, Ariyalur, confirming the Judgement and Decree dated 30/04/2008 made in OS No. 33/08 on the file of Principal District Munsif, Ariyalur.

For petitioners ... Mr.R.Shanmugasundaram, A.G. assisted by Mr.A.E.Ravichandran, G.A (CS)

For Respondents ... Mr.V.Venkateseshan for Mr.V.Illanchezian

O R D E R

The above review application is filed to review the judgment dated 28.03.2016 passed in S.A.No.933 of 2013.

2. The ground, on which the review is filed, is that the issue of the patta in respect of Anadeenam lands by the Tahsildar was without jurisdiction, since the issuing authority is only the Government and the suit O.S.No.33 of 2008 is bad for non-joinder of proper and necessary parties. That the Court has overlooked the fact that the properties have been classified as Anadeenam lands, which now vests with the Government.

3. The main ground seeking a review is that the suit has been decided in great haste (i.e) within a period of 100 days and that the learned Judge has overlooked the contention of the learned Government Advocate regarding the suit being barred under Section 15 of the Patta Pass Book Act, 1983.

4. The above ground forms the fulcrum of the grounds of review. To appreciate the facts, it is necessary to briefly touch upon the earlier proceedings. A suit O.S.No.33 of 2008 had been filed by the plaintiffs for declaration of their title and right to the suit property and for mandatory injunction to the respondents to alter the revenue records and grant patta to the plaintiffs.

5. The case of the plaintiffs is that though the suit property belonged to them, it had been mentioned as Anadeenam in the revenue records, which fact came to their knowledge only when the plaintiffs had approached the third defendant, viz., Tahsildar, Ariyalur for obtaining the patta and Chitta, as they required it for obtaining a loan. On coming to know about this fact, the fourth plaintiff's father had given an application to the second and third defendants to change the entry in the revenue records. However, the said change was not effected by the defendants and therefore, the plaintiffs were constrained to file the suit.

6. The third respondent-Tahsildar, Ariyalur alone had filed his written statement. The District Collector, Ariyalur as well as the Revenue Divisional Officer, Ariyalur did not deem it fit to file their written statement. In the written statement, the third respondent had contended that at the time of the original survey, no person had approached the revenue authorities showing proof of their ownership and therefore, the property was classified as Anadeenam. Thereafter, an enquiry had been conducted and the revenue authorities came to learn that the suit properties belong to the plaintiffs and possession was also with them. The defendants had taken as a stand that if the plaintiffs were able to prove through documents that they were the owners of the lands and continue to be in possession of the said lands, the defendants had no objection to issue the patta to the plaintiffs. The Principal District Munsif, Ariyalur, on considering the evidence on record, namely, the

oral evidence of P.W.1 and P.W.2 and D.W.1 and Exhibits A1 to A14 and B1 and B2, decreed the suit in favour of the plaintiffs as the plaintiffs had proved their possession as well as title to the property.

7. Though the third defendant had stated in his written statement that he had no objection to the grant of patta, if the plaintiffs could prove the title and possession, however, they had challenged the judgment and decree of the trial Court. The appellate Court upheld the judgement and decree of the trial Court and dismissed the appeal filed by the defendants. As against which, the appellants had filed S.A.No.933 of 2013 before this Court.

8. The substantial question of law, which was raised in the appeal was (a) whether the suit was barred by the jurisdiction as per Section 15 of the Patta Pass Book Act and (b) whether the plaintiffs are entitled to get patta through Court. This Court had considered the legal provisions and held that on a perusal of Sub Sections (1) and (2) of 15 of the Tamil Nadu Patta Pass Book Act, it was apparent that it does not operate as a bar to the plaintiffs for filing the suit. This Court has also taken note of all the contentions raised in the written statement filed by the third defendant and ultimately, the appeal was also dismissed. It is against this judgment and decree that the review has been filed.

9. The learned Advocate General appearing for the review petitioners would submit that all is not well in the manner in which the suit has been conducted and there appears to be a collusion between the third defendant and the plaintiffs. He would draw the attention of this Court to the written statement where the Tahsildar has gone on record to state that in an enquiry conducted, they came to know that the suit property belonged to the plaintiffs and they were in possession and that if the plantiffs were able to produce documentary evidence, he had no objection to the Court granting the relief. The learned Advocate General would submit that a very flimsy defence has been taken and that earlier proceedings had not been disclosed in the written statement and therefore, fraud has been played on Court. He would therefore pray that the judgment needs to be reviewed.

10. However, a perusal of the grounds of review does not reflect oral arguments now made by the learned Advocate General. No where in the grounds of review has an averment made that the plaintiffs have played fraud on Court. There is no explanation as to why the defendants, who are in possession of all the revenue records, had not provided details, if any, to the Court. The District Collector and the Revenue Division Officer, who had

been arrayed as defendants 1 and 2, had not chosen to file the written statement. In fact, the defendants have filed the additional documents in the form of the settlement register and an SLR as Exhibits B3 and B4 before the lower appellate Court, namely, the Sub Court, Ariyalur. It also appears that evidence had been taken in the appellate Court where the plaintiffs had also marked Exhibits A15 to A18 and the documents filed on the side of the defendants appears to have been marked by consent. The third defendant had not got into the box to mark these documents. Now in the review additional documents in the form of a typed set of papers have been filed. However, no petition has been filed to receive these documents as additional evidence. This Court has therefore not considered the same. The only basis on which the review has been filed is on the ground of fraud.

11. The Hon'ble Supreme Court speaking through Justice Krishna Iyer in the judgment reported as Sow Chandra Kanta and Another -vs- Sheik Habib 1975 (1) SCC 674 had observed that "A review of a judgment is a serious step and reluctant resort to it is proper where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility."

12. In its judgment reported as Kamlesh Verma -vs- Mayawati and others reported in 2013 (8) SCC 320 after an in depth analysis of the various case law on review petitions the learned Judges had observed that it had been time and again reiterated in the various judicial pronouncements of the Supreme Court that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. The Bench summarized the principles in paragraph 20 of the said judgment as follows:-

> "20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
>
> 20.1. When the review will be maintainable:
>
> (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
>
> (ii) Mistake or error apparent on the face of the record;
>
> (iii) Any other sufficient reason.
>
> The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean “a reason sufficient on grounds at least analogous to those

specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275]

20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.

13. Keeping these principles in mind if the case on hand is analyzed it will be seen that it is not the Review Petitioners/Defendants' case that they have discovered a new and important matter or evidence which after the exercise of due diligence was not within their knowledge or could not be produced by them. It is also not their case that the judgment suffers from a mistake or an error apparent on the face of the record. None of these grounds are stated in the instant review petition and even the oral arguments of fraud have not been taken nor substantiated by the Review Petitioners.

14. Further a mere perusal of the grounds would clearly demonstrate that the Review Petitioners' / defendants are only trying to re-argue the appeal in the guise of a review petition. In ground No.11, the Review Petitioners have elaborated as follows:-

"11. The Hon'ble Court ought to have taken into consideration the contention of the learned Government Advocate (CS) of the appellants to the effect that the suit itself is barred U/s.15 of the

Patta Pass Book Act, 1983 (Tamil Nadu Act 4 of 1986). The Hon'ble High Court would have considered that Sub Sections 1 and 2 of Section 15 of the above Act does not operate as a bar for the respondent to file the concerned suit."

This is the first substantial question of law that was answered by this Court in the judgment under review.

15. In the absence of essential pre-requisite for maintaining a review petition, the review petition filed by the defendants has to fail and accordingly, the review petition stand dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srn

To:

1. The Subordinate Judge,
   Ariyalur.

2. The Principal District Munsif,
   Ariyalur.

+1 CC to Mr.M.V.Venkataseshan, Advocate, Sr.No. 35464.

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NR(CO)
LS(03/09/2021)